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06/01/2001

Robert E. Callies

Lindsay 51

2262

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07/31/2007

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EXAMINER

HWU, DAVIS D

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/872,604
Filing Date: June 01, 2001
Appellant(s): CALLIES ET AL.

**MAILED
JUL 31 2007
GROUP 3700**

Joel H. Bock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 20, 2005 appealing from the Office action mailed January 18, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-9, 13-19, and 21-25.

Claims 10-12 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26-29 are withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

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The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND (S) OF REJECTION

Claims 2, 13, and 21 are now rejected under 35 USC 102 as being anticipated by Hane.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC 102 rejections of claims 1, 2, 13, 14, 16-19, 21, and 23-25 as being anticipated by Dunn are hereby withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US Patent 4,162,041	Hane	07-1979
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC 102

Claims 1-9, 13, 14, 16-19, 21, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hane.

Hane shows a distribution tube assembly for an irrigation system of the type having a

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main supply line 7 for conveying fluid, the distribution tube assembly comprising an elongated frame with a first upstream end, a second downstream end and at least two fluid passageways 2 and 3 defined therein to permit more than one fluid stream therethrough, each passageway permitting fluid flow from the first upstream end to the second downstream end, at least one of the fluid passageways being in fluid communication with the main supply line, at least another of the fluid passageways being in fluid communication with a second fluid supply line 18. Hane also shows adaptors positioned at the first and second ends of the distribution assembly in which the adaptors comprise a branch fitting as recited in claims 4-7. Regarding claim 8, since the adaptor 6 has a bore disposed therein in fluid communication with at least one of the passageways, forming a plurality of bores on the adaptor would have been a matter of design choice since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Regarding the new grounds of rejection of claims 2, 13, and 21, Hane also shows the first fluid passageway 2 being at least twice as large a second passageway 3 (see Figure 2) and thus the fluid passageways 2 and 3 have different diameters to accommodate different flow rates.

Claim Rejections - 35 USC 103

Claims 15 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Hane.

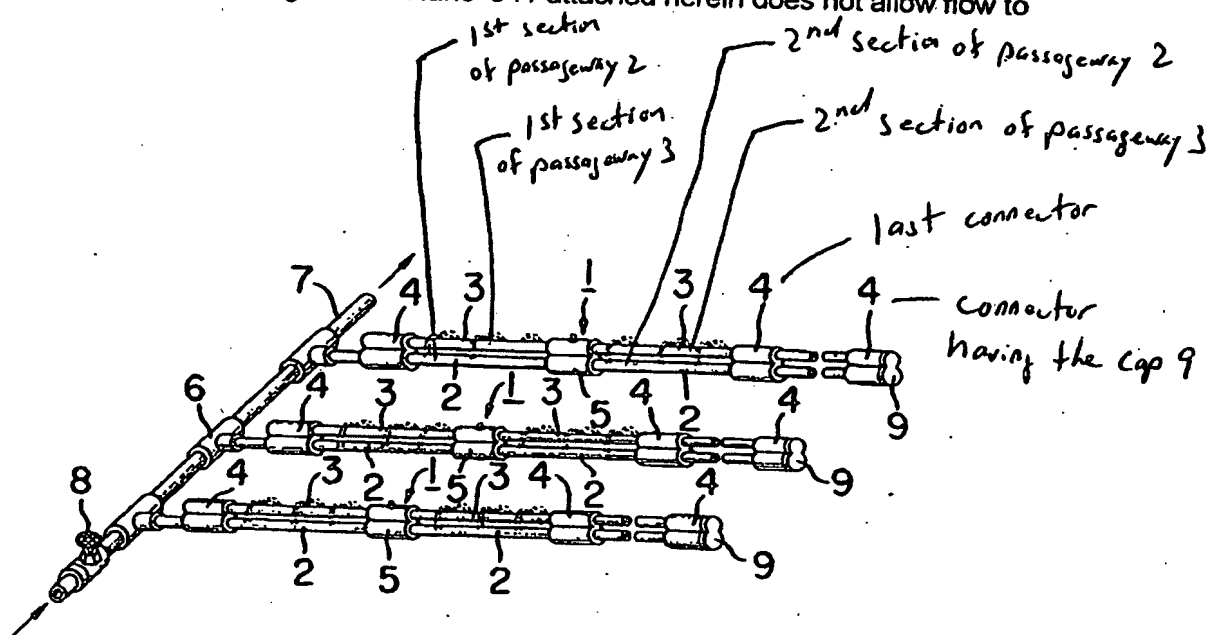
Since Hane shows a regulator valve 8 in the main supply line, it would have been obvious to one having ordinary skill in the art that placing the regulator valve in the first adaptor before the branch could be done without comprising the function of the device

of Hane since the valve 8 could still regulate the main supply line.

(11) Response to Argument

Argument A

Appellant argues that claims 1, 3-9, and 14 are not anticipated by Hane (4,162,041). In the apparatus of Hane, water from main supply line 7 flows into first fluid passageways 2 and from each passageway 2 into second fluid passageways comprising hole 15 and pipe sections 3 (also considered as passages) via a fluid supply line 18 of connector 5 as seen in Figure 5. The examiner agrees that the first sockets 4 do not permit water flow from one sub-pipe segment 3 to the next segment 3, however, the second sockets 5 do permit such a flow via openings 13 in the sockets 5. As water from main supply 7 flows along one of the passageways 2, the water flows into the corresponding pipe (passageway) 3 via a supply line 18 connected to opening 13 of the connector 5 and proceeds to the second downstream end of pipe 3. The first section of pipe 3 as seen in the Figure 1 of Hane '041 attached herein does not allow flow to



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proceed to the second downstream end, however, the second section of pipe 3 does permit the fluid to flow to the second downstream end through 18 as stated previously. Thus, the combination of the first section of pipe 3, the connector 5, and the second section of pipe 3 permits fluid flow from the first upstream end to the second downstream end. Since Applicant's claim 1 recites "each passageway permitting fluid flow from the first upstream end to the second downstream end", the device of Hane meets this claim language since passageway sections of passageway 2 along with connector 5 permits fluid to flow from the first upstream end to the second downstream end as does the combination of the first and second sections of passageway 3 along with the connector 5.

Hane also shows a cap 9 attached to a socket 4 as seen in Figure 1 of Hane '041 attached herein. The apparatus of Hane as seen in Figure 1 alternates a connector 4, a connector 5, and another connector 4. If the last connector 4 (the one farthest from the main supply 7) is capped with cap 9, then the water flows from the upstream end (end near the main supply 7) to a second downstream end which has the capped connector. The connector 4 having the cap as seen in Figure 1 is actually not a part of the apparatus of Hane since it is only there to teach that the last connector of the apparatus of Hane would have a cap 9. Thus, for a relatively shorter field to be irrigated, one having ordinary skill in the art would recognize that there may not be a requirement for additional connectors 5 and that the last connector 4 could be capped with a cap 9. Since the Applicant is claiming "fluid passageways", the sections of 3 in conjunction with holes 15 of the connectors 5 form a "fluid passageway" that permits flow from the

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upstream end of the apparatus to the downstream of the apparatus as stated above.

Therefore, the apparatus of Hane comprises more than one fluid passageway throughout its length-one formed by the sections of passageway 2 which are fluidly connected to each other via connector 5 and a second passageway formed by the combination of the sections of passageway 3 along with the hole 15 of connector 5 as stated above.

Regarding Applicant's argument that Hane does not show a second fluid supply separate from the first or main supply line, the examiner respectfully disagrees because water from pipes 2 flows into pipes 3 via flow passage 18 of connector 5 and thus passage 18 is a second fluid supply line which supplies water to pipes 3. The Applicant has not claimed further limitations of the "second fluid supply line" itself. The passage 18 of connector 5 can also be considered as an "alternate supply."

Argument B

Appellant's argument that claims 1, 2, 13, 14, 16-19, 21, and 23-25 are not anticipated by Dunn (4,763,842) are now moot since these rejections have been withdrawn.

Argument C

Regarding the 35 USC 103 rejections of claims 15 and 22, the branch sockets 6 of Hane are considered as adapters and since Hane also shows a regulator valve 8, one having ordinary skill in the art would know that if the valve 8 was placed in the first adapter of the water flow direction, the valve 8 would still properly regulate water flow to the apparatus of Hane.

For the above reasons, it is believed that the rejections should be sustained.

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This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the **TWO MONTH** time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

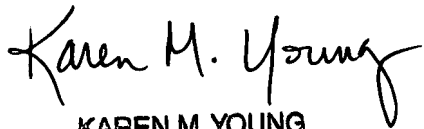
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Respectfully submitted,



Davis Hwu, Primary Examiner

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:



**KAREN M. YOUNG
DIRECTOR
TECHNOLOGY CENTER 3700**

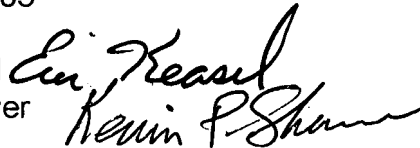
DDH

May 25, 2005

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